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9 NATIONAL ELECTRONICS WARRANTY
10 CORPORATION; NATIONAL ELECTRONICS
11 WARRANTY LLC

12 [ADDITIONAL COUNSEL LISTED ON SIGNATURE PAGE]

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

15 SMART AND FRIENDLY
16 ENTERPRISES, LLC d/b/a
17 AMERICAN REPAIR SPECIALISTS,
18 INC.,

19 Plaintiff,

20 vs.

21 NATIONAL ELECTRONICS
22 WARRANTY CORPORATION;
23 NATIONAL ELECTRONICS
24 WARRANTY LLC, and DOES
25 1-100,

26 Defendants.

CASE NO. 12-CV-09000 R (FFM)

**STIPULATED PROTECTIVE
ORDER**

Hon. Manuel L. Real

1 1. PURPOSE, LIMITATIONS, AND GOOD CAUSE

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation would be warranted. Accordingly, the parties hereby
6 stipulate to and petition the Court to enter the following Stipulated Protective
7 Order.

8 The parties acknowledge that this Order does not confer blanket protections
9 on all disclosures or responses to discovery and that the protection it affords
10 extends only to the limited information or items that are entitled under the
11 applicable legal principles to treatment as “Confidential.” The parties further
12 acknowledge, as set forth in Section 10 below, that this Stipulated Protective Order
13 creates no entitlement to file confidential information under seal. Civil Local Rule
14 79-5 sets forth the procedures that must be followed and reflects the standards that
15 will be applied when a party seeks permission from the court to file material under
16 seal.

17 1.1 Good Cause Statement: No designation of material as “Confidential”
18 shall be made unless the Designating Party believes in good faith that the material
19 is entitled to protection under Federal Rule of Civil Procedure 26(c). Good cause
20 exists to designate as “Confidential” the information and documents described in
21 Section 2.3 below. Unrestricted or unprotected disclosure of confidential,
22 proprietary, or private information would likely result in substantial prejudice or
23 harm to the Designating Party by revealing competitively sensitive and valuable
24 information, or by revealing private personal information to which a valid privacy
25 interest pertains. Confidential information may constitute valuable tangible and
26 intangible assets of a Designating Party, and unrestricted disclosure may destroy or
27 significantly diminish such value as well as jeopardize the Designating Party’s
28 competitive standing.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 “Confidential” Information or Items: information (regardless of how generated, stored, or maintained) or tangible things that qualify for protection under standards developed under Rule 26(c). Any Party or non-party from whom discovery is sought in connection with this action may designate as “Confidential” any documents or portions of documents that contain any of the following categories of information:

(a) Personal identification information belonging to any customer of National Electronics Warranty Corporation and National Electronics Warranty LLC (collectively, “Defendants”), including, without limitation, name, address, telephone number, e-mail address, type of equipment purchased, type of repair sought, and payment information;

(b) Any of Defendants’ customers’ transaction records, which may contain credit card information, personal identification information, or other information in which consumers maintain a reasonable expectation of privacy;

(c) Defendants’ proprietary policies and procedures regarding equipment repair and reimbursement; and

(d) Non-public financial data maintained by Defendants, including, but not limited to, financial statements, income statements, or other documents reflecting revenue received by Defendants.

1 2.4 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 2.5 Producing Party: a Party or non-party that produces Disclosure or
4 Discovery Material in this action.

5 2.6 Designating Party: a Party or non-party that designates information or
6 items that it produces in disclosures or in responses to discovery as “Confidential.”

7 2.7 Protected Material: any Disclosure or Discovery Material that is
8 designated as “Confidential.”

9 2.8 Outside Counsel: attorneys who are not employees of a Party, but who
10 are retained to represent a Party in this action.

11 2.9 House Counsel: attorneys who are employees of a Party.

12 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as
13 well as their support staff).

14 2.11 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its Counsel to serve as
16 an expert witness or as a consultant in this action and who is not a past or a current
17 employee of a Party or of a competitor of a Party’s and who, at the time of
18 retention, is not anticipated to become an employee of a Party or a competitor of a
19 Party. This definition includes a professional jury or trial consultant retained in
20 connection with this litigation.

21 2.12 Professional Vendors: persons or entities that provide litigation
22 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
23 demonstratives; organizing, storing, or retrieving data in any form or medium; etc.)
24 and their employees and subcontractors.

25 3. SCOPE

26 The protections conferred by this Stipulated Protective Order cover not only
27 Protected Material, but also any information copied or extracted therefrom, as well
28 as all copies, excerpts, summaries, or compilations thereof, plus testimony,

1 conversations, or presentations by a Party or Counsel to or in court or in other
2 settings that might reveal Protected Material.

3 4. DURATION

4 Even after the termination of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs.

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or non-party that designates information or items for protection under
10 this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. A Designating Party must take care to
12 designate for protection only those parts of material, documents, items, or oral or
13 written communications that qualify — so that other portions of the material,
14 documents, items, or communications for which protection is not warranted are not
15 swept unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations
17 that are shown to be clearly unjustified, or that have been made for an improper
18 purpose (*e.g.*, to unnecessarily encumber the case development process or to
19 impose unnecessary expenses and burdens on other parties), could expose the
20 Designating Party to sanctions.

21 If it comes to a Party's or a non-party's attention that information or items
22 that it designated for protection do not qualify for protection, that Party or non-
23 party must promptly notify all other parties that it is withdrawing the mistaken or
24 inadvertent designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in
26 this Order (*see, e.g.*, Section 5.2(a) below), or as otherwise stipulated or ordered,
27 material that qualifies for protection under this Order must be clearly so designated
28 at or before the time the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in document form (apart from transcripts of
3 depositions or other pretrial or trial proceedings), that the Producing Party affix the
4 legend “CONFIDENTIAL” at the top of each page that contains protected material.
5 If only a portion or portions of the material on a page qualifies for protection, the
6 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making
7 appropriate markings in the margins).

8 A Party or non-party that makes original documents or materials
9 available for inspection need not designate them for protection until after the
10 inspecting Party has indicated which material it would like copied and produced.
11 During the inspection and before the designation, all of the material made available
12 for inspection shall be deemed “Confidential.” After the inspecting Party has
13 identified the documents it wants copied and produced, the Producing Party must
14 determine which documents, or portions thereof, qualify for protection under this
15 Order, and then, before producing the specified documents, the Producing Party
16 must affix the appropriate legend (*i.e.*, “CONFIDENTIAL”) at the top of each page
17 that contains Protected Material. If only a portion or portions of the material on a
18 page qualifies for protection, the Producing Party also must clearly identify the
19 protected portion(s) (*e.g.*, by making appropriate markings in the margins).

20 A party may designate as “Confidential” documents or discovery
21 materials produced by a non-party by providing written notice to all parties of the
22 relevant document numbers or other identification within thirty (30) days after
23 receiving such documents or discovery materials.

24 (b) for testimony given in deposition or in other pretrial or trial
25 proceedings, that the Party or non-party offering or sponsoring the testimony
26 identify on the record, before the close of the deposition, hearing, or other
27 proceeding, all protected testimony, and further specify any portions of the
28 testimony that qualify as “Confidential.” When it is impractical to identify

1 separately each portion of testimony that is entitled to protection, and when it
2 appears that substantial portions of the testimony may qualify for protection, the
3 Party or non-party that sponsors, offers, or gives the testimony may invoke on the
4 record (before the deposition or proceeding is concluded) a right to have up to 30
5 days to identify the specific portions of the testimony as to which protection is
6 sought. Only those portions of the testimony that are appropriately designated for
7 protection within the 30 day period shall be covered by the provisions of this
8 Stipulated Protective Order.

9 Transcript pages containing Protected Material must be separately
10 bound by the court reporter, who must affix to the top of each such page the legend
11 “CONFIDENTIAL,” as instructed by the Party or non-party offering or sponsoring
12 the witness or presenting the testimony. The Designating Party will be responsible
13 for any additional costs imposed by the court reporting agency to create separately
14 bound excerpts of deposition transcripts containing Protected Material.

15 (c) for information produced in some form other than documentary,
16 and for any other tangible items, that the Producing Party affix in a prominent place
17 on the exterior of the package or container in which the information or item is
18 stored the legend “CONFIDENTIAL.” If only portions of the information or item
19 warrant protection, the Producing Party, to the extent practicable, shall identify the
20 protected portions.

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
22 failure to designate Protected Material as “Confidential” does not, standing alone,
23 waive the Designating Party’s right to secure protection under this Order for such
24 material. If Protected Material is appropriately designated as “Confidential” after
25 the material was initially produced, the Receiving Party, on timely notification of
26 the designation, must make reasonable efforts to assure that the material is treated
27 in accordance with the provisions of this Order.
28

1 6. CHALLENGING CONFIDENTIALITY

2 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
3 Party's confidentiality designation is necessary to avoid foreseeable substantial
4 unfairness, unnecessary economic burdens, or a later significant disruption or delay
5 of the litigation, a Party does not waive its right to challenge a confidentiality
6 designation by electing not to bring a challenge promptly after the original
7 designation is disclosed.

8 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
9 Designating Party's confidentiality designation must do so in good faith and must
10 begin the process by conferring directly (in person or telephonically) with counsel
11 for the Designating Party. In conferring, the challenging Party must explain the
12 basis for its belief that the confidentiality designation was not proper and must give
13 the Designating Party an opportunity to review the designated material, to
14 reconsider the circumstances, and, if no change in designation is offered, to explain
15 the basis for the chosen designation. A challenging Party may proceed to the next
16 stage of the challenge process only if it has engaged in this meet and confer process
17 first.

18 6.3 Judicial Intervention. A Party that elects to press a challenge to a
19 confidentiality designation after considering the justification offered by the
20 Designating Party may file and serve a motion under Civil Local Rule 37 (and in
21 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged
22 material and sets forth in detail the basis for the challenge. Each such motion must
23 be accompanied by a competent declaration that affirms that the movant has
24 complied with the meet and confer requirements imposed in the preceding
25 paragraph and by Civil Local Rule 37-1 and that sets forth with specificity the
26 justification for the confidentiality designation that was given by the Designating
27 Party in the meet and confer dialogue.
28

1 The burden of persuasion in any such challenge proceeding shall be on the
 2 Designating Party. Until the Court rules on the challenge, all parties shall continue
 3 to treat the material in question as “Confidential.”

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 6 disclosed or produced by another Party or by a non-party in connection with this
 7 case only for prosecuting, defending, or attempting to settle this litigation. Such
 8 Protected Material may be disclosed only to the categories of persons and under the
 9 conditions described in this Order. When the litigation has been terminated, a
 10 Receiving Party must comply with the provisions of Section 11 below.

11 Protected Material must be stored and maintained by a Receiving Party at a
 12 location and in a secure manner that ensures that access is limited to the persons
 13 authorized under this Order.

14 7.2 Disclosure of “Confidential” Information or Items. Unless otherwise
 15 ordered by the Court or permitted in writing by the Designating Party, a Receiving
 16 Party may disclose any information or item designated “Confidential” only to:

17 (a) the Receiving Party’s Outside Counsel of record in this action,
 18 as well as employees of said Outside Counsel to whom it is reasonably necessary to
 19 disclose the information for this litigation;

20 (b) the officers, directors, and employees (including House
 21 Counsel) and former employees of the Designating or Receiving Party to whom
 22 disclosure is reasonably necessary for this litigation and who have signed the
 23 “Acknowledgment and Agreement to Be Bound,” attached hereto as Exhibit A;

24 (c) experts (as defined in this Order) of the Receiving Party to
 25 whom disclosure is reasonably necessary for this litigation and who have signed the
 26 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (d) the Court and its personnel;

28 (e) court reporters and their staff;

1 (f) any mediator (including his or her staff) retained to mediate this
2 litigation and who has signed the “Acknowledgment and Agreement to Be Bound”
3 (Exhibit A);

4 (g) professional vendors to whom disclosure is reasonably
5 necessary for this litigation and who have signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A);

7 (h) during their depositions, and during preparation for deposition
8 or trial testimony, witnesses in the action to whom disclosure is reasonably
9 necessary and who have signed the “Acknowledgment and Agreement to Be
10 Bound” (Exhibit A). Pages of transcribed deposition testimony or exhibits to
11 depositions that reveal Protected Material must be separately bound by the court
12 reporter and may not be disclosed to anyone except as permitted under this
13 Stipulated Protective Order.

14 (i) the author of the document or the original source of the
15 information.

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
17 IN OTHER LITIGATION

18 If a Receiving Party is served with a subpoena or an order issued in other
19 litigation that would compel disclosure of any information or items designated in
20 this action as “Confidential,” the Receiving Party must so notify the Designating
21 Party in writing (by e-mail or fax, if possible) immediately, and in no event more
22 than three court days after receiving the subpoena or order. Such notification must
23 include a copy of the subpoena or court order.

24 The Receiving Party also must immediately inform in writing the Party who
25 caused the subpoena or order to issue in the other litigation that some or all the
26 material covered by the subpoena or order is the subject of this Protective Order. In
27 addition, the Receiving Party must deliver a copy of this Stipulated Protective
28

1 Order promptly to the Party in the other action that caused the subpoena or order to
2 issue.

3 The purpose of imposing these duties is to alert the interested parties to the
4 existence of this Protective Order and to afford the Designating Party in this case an
5 opportunity to try to protect its confidentiality interests in the court from which the
6 subpoena or order issued. The Designating Party shall bear the burden and the
7 expense of seeking protection of its confidential material in that court — and
8 nothing in these provisions should be construed as authorizing or encouraging a
9 Receiving Party in this action to disobey a lawful directive from another court.

10 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
12 Protected Material to any person or in any circumstance not authorized under this
13 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
14 writing the Designating Party of the unauthorized disclosure(s), (b) use its best
15 efforts to retrieve all copies of the Protected Material, (c) inform the person or
16 persons to whom unauthorized disclosures were made of all the terms of this Order,
17 and (d) request such person or persons to execute the “Acknowledgment and
18 Agreement to Be Bound” that is attached hereto as Exhibit A.

19 10. FILING PROTECTED MATERIAL

20 Without written permission from the Designating Party or a court order
21 secured after appropriate notice to all interested persons, a Party may not file in the
22 public record in this action any Protected Material. A Party that seeks to file under
23 seal any Protected Material must comply with Civil Local Rule 79-5. If the non-
24 Designating Party intends to file any Protected Material with the Court, it will
25 provide sufficient advance notice of the intended filing to the Designating Party so
26 that the Designating Party can file a motion to file that Protected Material under
27 seal.
28

1 11. FINAL DISPOSITION

2 Unless otherwise ordered or agreed in writing by the Producing Party, within
3 sixty days after the final termination of this action, each Receiving Party must
4 return all Protected Material to the Producing Party. As used in this subdivision,
5 “all Protected Material” includes all copies, abstracts, compilations, summaries, or
6 any other form of reproducing or capturing any of the Protected Material. With
7 permission in writing from the Designating Party, the Receiving Party may destroy
8 some or all of the Protected Material instead of returning it. Whether the Protected
9 Material is returned or destroyed, the Receiving Party must submit a written
10 certification to the Producing Party (and, if not the same person or entity, to the
11 Designating Party) by the sixty-day deadline that identifies (by category, where
12 appropriate) all the Protected Material that was returned or destroyed and that
13 affirms that the Receiving Party has not retained any copies, abstracts,
14 compilations, summaries, or other forms of reproducing or capturing any of the
15 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
16 an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
17 correspondence, or attorney work product, even if such materials contain Protected
18 Material. Any such archival copies that contain or constitute Protected Material
19 remain subject to this Protective Order as set forth in Section 4 above.

20 12. PRIVILEGED DOCUMENTS

21 The Parties agree that either Party’s decision to produce certain documents
22 protected by the attorney-client privilege, attorney work product doctrine, or any
23 other recognized legal privilege will be narrowly construed as a limited waiver of
24 the privilege claim as to those documents only. Such limited waiver shall not have
25 the effect of waiving the privilege as to any other documents.

26 13. MISCELLANEOUS

27 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the Court in the future.

1 13.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order, no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on
5 any ground to use in evidence of any of the material covered by this Protective
6 Order.

7
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9
10 DATED: May _____, 2013

DAVID M. WALSH
MORRISON & FOERSTER LLP

11
12 By: _____
13 DAVID M. WALSH

14 Attorneys for Defendants
15 NATIONAL ELECTRONICS
16 WARRANTY CORPORATION;
17 NATIONAL ELECTRONICS
18 WARRANTY LLC

19 DATED: May _____, 2013

SUSAN D. SALISBURY

20 By: _____
21 Susan D. Salisbury

22 Attorney for Plaintiff
23 SMART & FRIENDLY ENTERPRISES,
24 LLC D/B/A/ AMERICAN REPAIR
25 SPECIALISTS.

26 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27 DATED: MAY 7, 2013



United States District Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____, of

_____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ in the case of *Smart & Friendly Enterprises, LLC v. National Electronics Warranty Corporation, et al.*, No. 12-CV-09000 R (FFM). I agree to comply with and to be bound by all the terms of the Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the Stipulated Protective Order to any person or entity except in strict compliance with the provisions of the Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of the Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Dated: _____

Signature _____

Printed name: _____